

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**NOTICE OF HEARING AND MOTION FOR ORDER GRANTING EXPEDITED  
RELIEF AND APPROVING STIPULATION AND SETTLEMENT AGREEMENT  
BETWEEN F.C. OF FLORIDA, INC. AND THE AGENCY FOR HEALTH CARE  
ADMINISTRATION FOR THE STATE OF FLORIDA**

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TO: The Parties-In-Interest as Defined in Local Rule 9013-3(a).

1. F.C. of Florida, Inc. ("Debtor"), by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on September 9, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3 Any response to this motion must filed and delivered not later than September 6, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and Holidays), or served and filed by mail not later than August 31, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and Holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a

core proceeding. The petition commencing this case was filed on April 12, 2004. The case is now pending in this Court.

5. This motion arises under Federal Rule of Bankruptcy Procedure 9019 and Local Rule 9019-1. This Motion is filed under Fed. R. Bankr. P. 9006 and 9014 and Local Rules 9006-1 and 9013-1 through 9013-3. Debtor requests that the Court enter an order approving the Stipulation and Settlement Agreement between Debtor and the Agency for Health Care Administration for the State of Florida (“Agency”). A copy of the Stipulation and Settlement Agreement is attached hereto as Exhibit A.

### **BACKGROUND**

6. The Debtor continues to operate its business as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Court has ordered, for procedural purposes only, joint administration of Intrepid U.S.A., Inc.’s and its affiliated debtors’ Chapter 11 cases.

7. The Intrepid home health care business began in July of 1994, and since that time, it has been based and headquartered in Edina, Minnesota. As of the filing date, the Intrepid umbrella of companies operated in 31 states, out of approximately 196 offices, with approximately 13,000 health care professionals which provided medically-necessary home health care services and therapies to approximately 125,000 patients annually, nearly all of whom are home-bound, incapacitated in some way, handicapped, elderly or otherwise physically disadvantaged to the extent that they have to rely on Intrepid for their health care in their homes. Intrepid also has a division of its business that provides staffing of nurses and health care practitioners in hospitals and extended care facilities. The majority of its revenues are derived from its home health care business operations.

8. On July 1, 2003, Debtor entered into an Asset Purchase Agreement with Medshares, Inc. a/k/a Meridian Corporation (“Medshares”). Under that agreement, Debtor sought to purchase the operations of seven offices located in Florida and their related provider numbers, licenses, and other assets. The sale was to close upon Debtor’s receipt of all the necessary regulatory approvals of, among other things, the transfer of the provider numbers and licenses. While the Debtor awaited regulatory approval, it took over the day-to-day management of seven offices located in Florida, in accordance with the Management Agreement between the parties.

9. On October 3, 2003, the Debtor filed a Change of Ownership application with the Agency for each of the seven offices pursuant to Florida Statute section 400.471(1) requesting an effective date of December 8, 2003, in order to comply with state regulations relating to notice requirements of a change of ownership of a licensed home health care agency.

10. On March 4, 2004, the Agency served Debtor with seven separate Notices of Intent to Impose Late Fine. By these notices, the Agency notified Debtor of the imposition of a \$2,500 fine for its alleged failure to file a Change of Ownership application at least sixty days before the effective date of the transfer of seven licensed offices. The Agency sought to impose a \$17,500 fine on the basis that the applications were due on May 1, 2003 – sixty days before the Debtor entered into the Asset Purchase Agreement with Medshares.

11. Because Debtor could not finalize the purchase of the assets of the seven offices until after it had received the necessary regulatory approval, Debtor believed it complied with Florida Statute section 400.471(1). As a result, Debtor requested an administrative hearing pursuant to Florida Statute sections 120.569 and 120.57(2).

12. The parties have negotiated the resolution of the administrative proceeding and the Stipulation and Settlement Agreement dismisses the administrative proceeding and reduces the Debtor's fine from \$17,500 to \$10,500.

### **RELIEF REQUESTED**

13. Fed. R. Bankr. P. 2002(a)(3) requires a twenty-day notice by mail of the hearing of approval of the settlement. However, Fed. R. Bankr. P. 2002(a)(3) permits a Court to dispense with notice altogether. Moreover, Fed. R. Bankr. P. 9006(c) enables the Court to reduce the time for notice of a hearing for cause. Cause exists here for an expedited hearing on approval of the Stipulation and Settlement Agreement because, among other things, the pending fines imperil Debtor's licenses and, therefore, its reorganization. Under such circumstances, sixteen days notice is more than adequate. Thus, the Court should grant expedited relief.

14. The Debtor also seeks Court approval of the Stipulation and Settlement Agreement pursuant to Bankruptcy Rule 9019. The Court should approve the agreement because it is in the best interests of the Debtor's estate and its creditors. The settlement reduces the fine the Agency sought to impose by 40%. The Debtor believes that this reduction reflects the strength of its defenses.

15. Debtor believes the Agency may proceed with the administrative hearing notwithstanding the pending bankruptcy cases under 11 U.S.C. § 362(b)(4) – as an exercise of the Agency's police and regulatory powers. Because Debtor cannot rely on the stay, it is compelled to proceed to defend against the regulatory action.

16. To further pursue its defenses in the administrative proceeding, Debtor would have to incur significant additional attorneys' fees and costs as well as expend additional internal resources, which are not justified by the amount at issue. The fees and costs would be greatly

increased by the fact that Debtor may have to retain special litigation counsel in Florida. Moreover, should the matter ultimately be decided on the merits, the Debtor is not guaranteed a better outcome. Finally, the pending proceeding jeopardized the licenses under which Debtor operates and, thereby, imperiled its reorganization. Thus, weighing the costs of continuing the matter against the costs of settlement, Debtor has exercised its business judgment in deciding to enter into the Stipulation and Settlement Agreement.

17. Pursuant to Local Rule 9013-2(d), the facts set forth in this Motion have been verified and the Motion is accompanied by a memorandum, proposed order, and proof of service.

18. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if necessary, call Gregory Von Arx, CFO, or Lisa M. Montague, General Counsel, to testify regarding the benefits of settlement to creditors in the bankruptcy estate. Their business addresses are Intrepid U.S.A., Inc., 6600 France Avenue South, Suite 510, Edina, Minnesota 55425.

WHEREFORE, F.C. of Florida, by its undersigned attorneys, respectfully requests that the Court enter an Order granting expedited relief and approving the settlement described herein and for such further relief as the Court deems just and equitable.

Dated: August 25, 2004

/s/ Ryan T. Murphy  
Clinton E. Cutler (#158094)  
Ryan T. Murphy (#311972)  
**FREDRIKSON & BYRON, P.A.**  
4000 Pillsbury Center  
200 South Sixth St.  
Minneapolis, MN 55402  
Telephone 612-492-7000

**ATTORNEYS FOR DEBTOR**

**VERIFICATION**

I, Lisa M. Montague, General Counsel for the Debtors named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief and that Exhibit A is a true and correct copy of the Stipulation and Settlement Agreement.

Dated: August 25, 2004

  
Lisa M. Montague

#3005444\1

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

F.C. OF FLORIDA, INC d/b/a  
INTREPID USA HEALTHCARE SERVICES,

Petitioner,

vs

AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Respondent.

DOAH Case Nos 04-2010  
04-2042  
04-2043  
04-2044  
04-2045  
04-2046  
04-2047

AHCA Case Nos. 2004001975  
2004001974  
2004001968  
2004001969  
2004001965  
2004001963  
2004001971

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**STIPULATION AND SETTLEMENT AGREEMENT**

The Agency for Health Care Administration (hereinafter the "Agency") and F C. OF FLORIDA, INC. d/b/a INTREPID USA HEALTHCARE SERVICES (hereinafter "Petitioner"), by and through their respective undersigned representatives, pursuant to §120.57(4), Florida Statutes (2003), each individually as a "party" and collectively as "parties," hereby enter into this Stipulation and Settlement Agreement ("Agreement") to resolve all seven (7) of the consolidated cases identified above in the style of this proceeding, and agree as follows:

**WHEREAS**, Petitioner is operating seven (7) separate Florida home health agencies licensed by the Agency pursuant to Chapter 400, Part IV, Florida Statutes (2003) and to Rule 59A-8, Florida Administrative Code, (2003);

**WHEREAS**, the Agency, as the regulatory and licensing authority over Petitioner, has jurisdiction in this administrative proceeding pursuant to §120.569 and §120.57(2), Florida Statutes (2003);



**WHEREAS**, the Agency served Petitioner with seven (7) separate Notices of Intent to Impose Late Fine, copies of which are attached hereto and made a part hereof as Exhibits 1 through 6, notifying Petitioner of the Agency's intent to impose an administrative fine in the amount of \$2,500 against each of Petitioner's seven (7) licensed agencies that are identified in the referenced notices in these consolidated cases, for a total of \$17,500 in fines;

**WHEREAS**, the parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the expenditure of substantial sums to litigate the dispute; and

**WHEREAS**, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding:

**NOW THEREFORE**, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals in the whereas clauses above are true and correct, expressly incorporated herein, and binding findings of the parties.

2. Upon full execution of this Agreement, Petitioner agrees: a) to forego any administrative review of the referenced administrative fines, including but not limited to, any request under §120.569, Florida Statutes, any request for an informal proceeding under §120.57(2), any request for a formal proceeding under §120.57(1), any appeal under §120.68, Florida Statutes, and any declaratory relief or other relief sought through any writ, of or from any court or administrative tribunal of competent jurisdiction; b) to waive any and all appeals or further proceedings regarding this matter; c) to waive any objections as to the form of the Final Order (e.g., regarding the presentation of findings of fact and conclusions of law).

3. Upon full execution of this Agreement, Petitioner agrees to pay the sum of \$10,500 as administrative fines, to the Agency within thirty (30) days of the entry of the Final Order.



4 Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall vest in the Circuit Court in Leon County, Florida

5 Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and directing the parties to comply with its terms.

6. Each party shall bear its own costs and attorney fees

7. This Agreement shall become effective on the date upon which it is fully executed by all of the persons designated below as signatories.

8 Petitioner for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement by or on behalf of Petitioner or any of its agencies in this State.

9. Effective upon payment of the sum as required in paragraph 3, the Agency for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge Petitioner of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and Petitioner's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or

administrative forum, including any claims arising out of this agreement by or on behalf of the Agency

10. This Agreement is binding upon all parties' herein and those identified in the previous two paragraphs.

11. This Agreement is entered into by the parties solely for the purpose of compromising and settling the matters discussed herein, and it is expressly understood and agreed, as a condition hereof, that neither this Agreement nor any consideration referred to herein shall constitute or be construed as an admission against any party, nor as evidencing or indicating to any degree an admission of the truth or correctness of any claim made by one party to or against the other party.

12. The undersigned have read and understand this Agreement and represent that they are duly authorized to bind their respective principals to it

13. This Agreement contains and incorporates the entire understanding and agreement of the parties and supercedes any prior oral or written agreements between the parties.

14. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

15. Petitioner authorizes and consents to the filing of any appropriate motion by the Agency, e.g. a motion to relinquish jurisdiction, that may be necessary to expeditiously effectuate this Agreement and its terms. In the event that this Agreement is not executed by all of the parties and a relinquishment of jurisdiction or other action resulting in the loss of a hearing date has occurred, then Petitioner shall have the right to the scheduling or re-scheduling of a hearing upon Petitioner's request.

16. Facsimile signatures shall be legally binding here as if made in the original.

\_\_\_\_\_  
ELIZABETH DUDEK  
Deputy Secretary,  
Division of Health Quality Assurance  
Agency for Health Care Administration

DATED: \_\_\_\_\_

\_\_\_\_\_  
GREG VON ARX, Chief Financial Officer  
F.C. of Florida, Inc. d/b/a Intrepid USA  
Healthcare Services  
660 France Avenue, Suite 510  
Edina, MN 55435

DATED: \_\_\_\_\_

\_\_\_\_\_  
VALDA CLARK CHRISTIAN  
General Counsel  
Agency for Health Care Administration  
2727 Mahan Drive  
Tallahassee FL 3238

DATED: \_\_\_\_\_



MARY PAT MOORE, INTERIM SECRETARY

JEB BUSH GOVERNOR

**CERTIFIED MAIL--RETURN RECEIPT REQUESTED**

**Certified Article Number**

7110 3900 9844 6497 2145

**SENDER'S RECORD**

March 24, 2004

**INTREPID USA HEALTHCARE SERVICES**

Attention: Administrator  
2902 59 ST W STE Q  
BRADENTON, FL 34209

License Number: 20053096  
Complaint Number: 2004001975

**NOTICE OF INTENT TO IMPOSE LATE FINE**

A fine of \$2,500.00 is hereby imposed due to INTREPID USA HEALTHCARE SERVICES late filing of its application for Change of Ownership. Your Change of Ownership application was not submitted sixty (60) days before the effective date of transfer pursuant to Section 400.471(7), F.S. Your Change of Ownership application was due on May 1, 2003. The application and licensure fee were submitted on October 3, 2003, making the application 154 days late. These days are multiplied by the \$50.00 a day fine, up to a maximum of \$2,500 pursuant to 59A-8.0086(3), F.A.C.

**TO PAY NOW:**

PAYMENT SHOULD BE MADE TO: AGENCY FOR HEALTH CARE ADMINISTRATION, AND SENT TO HOME CARE UNIT, 2727 MAHAN DRIVE, MAIL STOP 34, TALLAHASSEE, FL 32308 ALONG WITH A COPY OF THIS NOTICE OF INTENT.

**EXPLANATION OF RIGHTS**

Pursuant to Section 120.569, Florida Statutes, (F.S.) you have the right to request an administrative hearing. In order to obtain a formal proceeding before the Division of Administrative Hearings under Section 120.57(1), F.S., your request for an administrative hearing must conform to the requirements in Section 28-106.201, Florida Administrative Code (F.A.C), and must state the material facts you dispute.

2727 Mahan Drive • Mail Stop #34  
Tallahassee, FL 32308



Visit AHCA Online at  
[www.fdhc.state.fl.us](http://www.fdhc.state.fl.us)



JEFF BUSH, GOVERNOR

MARY PAT MOORE, INTERIM SECRETARY

**CERTIFIED MAIL--RETURN RECEIPT REQUESTED**

March 24, 2004

Certified Article Number

7160 3901 9844 6497 1780

SENDER'S RECORD

**INTREPID USA HEALTHCARE SERVICES**

Attention: Administrator  
96 WILLARD ST STE 305  
COCOA, FL 32922

License Number: 20048096

Complaint Number: 2004001974

**NOTICE OF INTENT TO IMPOSE LATE FINE**

A fine of \$2,500.00 is hereby imposed due to INTREPID USA HEALTHCARE SERVICES late filing of its application for Change of Ownership. Your Change of Ownership application was not submitted sixty (60) days before the effective date of transfer pursuant to Section 400.471(7), F.S. Your Change of Ownership application was due on May 1, 2003. The application and licensure fee were submitted on October 3, 2003, making the application 154 days late. These days are multiplied by the \$50.00 a day fine, up to a maximum of \$2,500 pursuant to 59A-8.0086(3), F.A.C.

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JEB BUSH, GOVERNOR

MARY PAT MOORE, INTERIM SECRETARY

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

March 24, 2004

**INTREPID USA HEALTHCARE SERVICES**  
Attention: Administrator  
725 S APPOLLO BLVD  
MELBOURNE, FL 32901

Certified Article Number

7160 3901 9844 6497 2190

SENDER'S RECORD

License Number: 200520952  
Complaint Number: 2004001968

**NOTICE OF INTENT TO IMPOSE LATE FINE**

A fine of \$2,500.00 is hereby imposed due to INTREPID USA HEALTHCARE SERVICES late filing of its application for Change of Ownership. Your Change of Ownership application was not submitted sixty (60) days before the effective date of transfer pursuant to Section 400.471(7), F.S. Your Change of Ownership application was due on May 1, 2003. The application and licensure fee were submitted on October 3, 2003, making the application 154 days late. These days are multiplied by the \$50.00 a day fine, up to a maximum of \$2,500 pursuant to 59A-8.0086(3), F.A.C.

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**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 24, 2004

Certified Article Number

7110 3901 9844 6497 2119

SENDER'S RECORD

**INTREPID USA HEALTHCARE SERVICES**

Attention: Administrator  
933 LEE RD STE 404  
ORLANDO, FL 32810

License Number: 20239096

Complaint Number: 2004001969

**NOTICE OF INTENT TO IMPOSE LATE FINE**

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Tallahassee, FL 32308



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# 20239096



JEB BUSH, GOVERNOR

MARY PAT MOORE, INTERIM SECRETARY

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 24, 2004

**INTREPID USA HEALTHCARE SERVICES**  
Attention: Administrator  
933 LEE RD STE 404  
ORLANDO, FL 32810

Certified Article Number

7160 3901 9844 6497 2176

SENDER'S RECORD

License Number: 22153096  
Complaint Number: 2004001965

**NOTICE OF INTENT TO IMPOSE LATE FINE**

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Tallahassee, FL 32308



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MARY PAT MOORE, INTERIM SECRETARY

DEB BUSEI, GOVERNOR

**CERTIFIED MAIL--RETURN RECEIPT REQUESTED**

March 24, 2004

**INTREPID USA HEALTHCARE SERVICES**  
Attention: Administrator  
100 SOUTH PINE ISLAND RD STE 201  
PLANTATION, FL 33324

License Number: 200280962  
Complaint Number: 2004001963

Certified Article Number

71110 3701 9844 6497 2183

SENDER'S RECORD

**NOTICE OF INTENT TO IMPOSE LATE FINE**

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MARY PAT MOORE, INTERIM SECRETARY

JES BUSH, GOVERNOR

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

March 24, 2004

**INTREPID USA HEALTHCARE SERVICES**  
Attention: Administrator  
5049 OKEECHOBEE BLVD STE 10  
WEST PALM BEACH, FL 33417

Certified Article Number

7160 3901 9844 6497 2152

SENDER'S RECORD

License Number: 20966096

Complaint Number: 2004001971

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UNITED STATES BANKRUPTCY COURT  
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ADMINISTRATION FOR THE STATE OF FLORIDA**

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F.C. of Florida, Inc. (“Debtor”), by its undersigned attorneys, respectfully requests that the Court grant expedited relief and approve the settlement of certain fines the Agency for Health Care Administration for the State of Florida (“Agency”) sought to impose. The Court should approve the Stipulation and Settlement Agreement because it is in the best interests of the Debtor’s estate and its creditors.

**BACKGROUND**

The supporting facts are set forth in the verified Motion.

**ANALYSIS**

**I. CAUSE EXISTS TO REDUCE NOTICE OF THE HEARING.**

Fed. R. Bankr. P. 2002(a)(3) requires a twenty-day notice by mail of the hearing of approval of the settlement. However, Fed. R. Bankr. P. 2002(a)(3) permits a Court to dispense with notice altogether. Moreover, Fed. R. Bankr. P. 9006(c) enables the Court to reduce the time for notice of a hearing for cause. Cause exists here for expedited hearing on approval of the Stipulation and Settlement Agreement because, among other things, the pending fines imperil

Debtor's licenses and, therefore, its reorganization. Under such circumstances, sixteen days notice is more than adequate. Thus, the Court should grant expedited relief.

**II. THE COURT SHOULD APPROVE THE STIPULATION AND SETTLEMENT AGREEMENT BECAUSE IT IS IN THE BEST INTERESTS OF THE DEBTOR'S ESTATE AND ITS CREDITORS.**

Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to the creditors, the United States trustee, the debtor and indenture trustees as provided in Rule 2002 and to such other entities as the court may designate, the court may approve a compromise or settlement.

Fed. R. Bankr. P. 9019(a).

"Rule 9019 of the Federal Rules of Bankruptcy Procedure vests the bankruptcy court with broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate." In re Bates, 211 B.R. 338, 343 (Bankr. D. Minn. 1997). In exercising this authority, the Court must determine whether the proposed settlement is in the best interest of the estate. In re Hanson Indus., Inc., 88 B.R. 942, 945 (Bankr. D. Minn. 1988). The pertinent factors that bear upon this determination are:

- The probability of success on the merits in the litigation;
- The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- The paramount interests of creditors and the proper deference to their reasonable views in the premises; and
- Whether the conclusion of the litigation promotes the integrity of the judicial system.

In re Bates, 211 B.R. at 343.

Debtor commenced an administrative proceeding challenging the Agency's attempt to impose a \$17,500 fine for Debtor's alleged failure to file a Change of Ownership application for seven offices that Debtor purchased from Medshares. Because Debtor could not finalize the purchase of the assets of the seven offices until after it had received the necessary regulatory approval, Debtor believed it complied with Florida Statute section 400.471(1). As a result, Debtor requested an administrative hearing pursuant to Florida Statute sections 120.569 and 120.57(2).

The Court should approve the Agreement because it is in the best interests of the Debtor's estate and its creditors. The settlement reduces the fine the Agency sought to impose by 40%. The Debtor believes that this reduction reflects the strength of its defenses.

Debtor believes the Agency may proceed with the administrative hearing notwithstanding the pending bankruptcy cases under 11 U.S.C. § 362(b)(4) – as an exercise of the Agency's police and regulatory powers. Because Debtor cannot rely on the stay, it is compelled to proceed to defend against the regulatory action.

To further pursue its defenses in the administrative proceeding, Debtor would have to incur significant additional attorneys' fees and costs as well as expend internal resources, which are not justified by the amount at issue. The fees and costs would be greatly increased by the fact that Debtor may have to retain special litigation counsel in Florida. Moreover, should the matter ultimately be decided on the merits, the Debtor is not guaranteed a better outcome. Finally, the pending proceeding jeopardized the licenses under which Debtor operates and, thereby, imperiled its reorganization. Thus, weighing the costs of continuing the matter against the costs of settlement, Debtor has exercised its business judgment in deciding to enter into the Stipulation and Settlement Agreement.

## **CONCLUSION**

F.C. of Florida, Inc. respectfully requests that the Court grant expedited relief and approve the Stipulation and Settlement Agreement.

Dated: August 25, 2004

/s/ Ryan T. Murphy

Clinton E. Cutler (#158094)

Heather B. Thayer (#222459)

Ryan T. Murphy (#311972)

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**ATTORNEYS FOR DEBTOR**

#3005457\1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Debtor

Chapter 11 Bankruptcy

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Case Nos. 04-41924 - 04-41988

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**CERTIFICATE OF SERVICE**

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Ryan T. Murphy, under penalty of perjury, states that on August 25, 2004 he caused to be served the following:

1. Notice of Hearing and Motion for Order Granting Expedited Relief and Approving Stipulation and Settlement Agreement Between F.C. of Florida, Inc. and the Agency for Health Care Administration for the State of Florida;
2. Memorandum in Support of Motion for Order Granting Expedited Relief and Approving Stipulation and Settlement Agreement Between F.C. of Florida, Inc. and the Agency for Health Care Administration for the State of Florida;
3. Proposed Order Granting Expedited Relief and Approving Stipulation and Settlement Agreement Between F.C. of Florida, Inc. and the Agency for Health Care Administration for the State of Florida;
4. Certificate of Service.

by sending true and correct copies via United States Mail to all parties on the attached service list.

Dated: August 25, 2004

/s/Ryan T. Murphy  
Ryan T. Murphy

## Service List: Intrepid II (Doc. No. 2964710)

Dennis Simon  
Intrepid U.S.A., Inc.  
6600 France Avenue South  
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Michael Massad/Steven Holmes  
Hunton & Williams  
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Dallas TX 75201

Robert B. Raschke Esq  
U.S. Trustee's Office  
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300 South Fourth Street  
Minneapolis, MN 55415

Roylene A. Champeaux  
D. Gerald Wilhelm  
Assistant US Attorney  
600 US Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

MN Department of Revenue  
Collection Enforcement  
551 Bankruptcy Section  
P.O. Box 64447  
St. Paul, MN 55164

Internal Revenue Service  
Special Procedures Branch  
Stop 5700  
316 North Robert Street  
St. Paul, MN 55101

Blaine Holliday  
IRS Office of Chief Counsel  
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380 Jackson Street  
St. Paul, MN 55101

Securities & Exchange Comm.  
Bankruptcy Section  
175 W Jackson Blvd.  
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Chicago IL 60604

DVI Financial Services, Inc.  
c/o Clark T. Whitmore  
Maslon Edelman et al.  
3300 Wells Fargo Center  
90 South Seventh Street  
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DVI Business Credit Corp.  
Richard M. Beck, Esq.  
Klehr, Harrison, Harvey et al.  
260 South Broad Street  
Philadelphia PA 19102-3163

Todd J. Garamella  
c/o John McDonald  
Robins, Kaplan  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

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### Requests for Notice

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Bankruptcy Administration  
IOS Capital, LLC  
1738 Bass Road  
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Macon GA 31208-3708

U.S. Bank N.A.  
c/o Michael R. Stewart  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
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Lang-Nelson Associates  
c/o William I. Kampf  
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Minneapolis, MN 55402

### Additional names for Intrepid II list

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127 Public Square  
Cleveland OH 44114

Garamella Family Ltd. Ptnsp  
236 Oakwood Road  
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Hopkins MN 55343

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Wildman, Harrold, Allen & Dixon  
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Chicago, IL 60606-1229

Bank One  
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Alexandria LA 71301

Mpls Comm Dev Agency  
105 – 5<sup>th</sup> Ave S  
Minneapolis MN 55401

Affordable Housing Project  
c/o Fed Home Loan Bank  
907 Walnut St  
Des Moines IA 50309

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ATTN: William Kuretsky  
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Neil Herskowitz  
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CapitalSource Finance LLC  
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CapitalSource Finance LLC  
c/o Kenneth J. Ottaviano, Esq.  
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## Service List: Intrepid II (Doc. No. 2964710)

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Oracle Corporation  
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Healthcare Assoc. of Walterboro  
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Linebarger Goggan Blair & Sampson  
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Bexar County  
c/o David G. Aelvoet  
Linebarger Goggan Blair & Sampson  
Travis Building, 711 Navarro, Ste 300  
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G-Fore Associates LLC  
c/o Bradford A. Steiner  
Jason S. Kelley  
Steiner Norris PLLCBradford  
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Les Nelson Investments  
c/o Mark E. Fosse  
Dunlap & Seeger, P.A.  
206 South Broadway, Suite 505  
PO Box 549  
Rochester, MN 55903

Aberfeldy II Limited Partnership  
c/o J. David Leamon  
Munsch Hardt Kopf & Harr  
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IBM Corporation  
Attn: Beverly H. Shideler  
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Huntington C. Brown  
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TN Dept. Labor and Workforce  
Development—Unemployment Ins.  
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TN Atty General's Office, Bky Div.  
PO Box 20207  
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*Atty for MO Dept. of Revenue*  
MO Dept. of Revenue, Bky Unit  
ATTN: Steven Ginther  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**ORDER GRANTING EXPEDITED RELIEF AND APPROVING STIPULATION  
AND SETTLEMENT AGREEMENT BETWEEN F.C. OF FLORIDA, INC.  
AND THE AGENCY FOR HEALTH CARE ADMINISTRATION  
FOR THE STATE OF FLORIDA**

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This matter came before the undersigned United States Bankruptcy Judge on expedited motion of F.C. of Florida, Inc. (“Debtor”), one of the debtors in the above-referenced bankruptcy cases, for approval of a Stipulation and Settlement Agreement between it and the Agency for Health Care Administration for the State of Florida. Appearances were noted on the record.

Based upon the arguments of counsel and all the documents and records herein, the Court being fully advised in the premises, and the Court’s Findings of Facts and Conclusions of Law, if any, having been stated on the record at the close of argument:

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. Debtor’s motion for expedited relief is granted.
3. The settlement described and attached to the Motion as Exhibit A is hereby approved.

4. Debtor is authorized to enter into the Stipulation and Settlement Agreement and is authorized to perform in accordance therewith.

Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
United States Bankruptcy Judge